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## PRE-APPEAL BRIEF REQUEST FOR REVIEW

Docket Number (Optional)

67108-321PUS1

## CERTIFICATE OF FACSIMILE

I hereby certify that this Pre-Appeal Brief Request For Review and Notice of Appeal are being facsimile transmitted to (571) 273-8300.

on February 8, 2008

Signature

Typed or printed name Theresa M. Palmateer

Application Number

10/001,296

Filed

11/02/2001

First Named Inventor

Subramanian Vasudevan

Art Unit

2616

Examiner

Wong, Warner

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).

Note: No more than five (5) pages may be provided.

I am the

 applicant/inventor. assignee of record of the entire interest.  
See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.  
(Form PTO/SB/96) attorney or agent of record.Registration number 37,139

Signature

David J. Gaskey

Typed or printed name

(248) 988-8360

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 attorney or agent acting under 37 CFR 1.34.

Registration number if acting under 37 CFR 1.34 \_\_\_\_\_

February 8, 2008

Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required.  
Submit multiple forms if more than one signature is required, see below\*.

\*Total of 1 forms are submitted.

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Vasudevan Subramanian  
Serial Number: 10/001,296  
Filed: 11/02/2001  
Group Art Unit: 2616  
Examiner: Wong, Warner  
Title: A METHOD FOR ALLOCATING WIRELESS  
COMMUNICATION RESOURCES

REQUEST FOR PRE-APPEAL BRIEF REVIEW

Box AF  
Commissioner for Patents  
P. O. Box 1450  
Alexandria, VA 22313-1450

Dear Sir:

Applicant respectfully requests pre-appeal brief review because there is no *prima facie* case of obviousness against any of claims 1-19.

**The rejection under 35 U.S.C. §103 based upon the proposed combination of the *Gitlin* and *Hortensius* references must be withdrawn.**

There are at least two reasons why there is no *prima facie* case of obviousness and the rejection must be withdrawn. First, the Examiner contends that the *Gitlin* reference teaches something that is not in the reference. Second, there is no benefit or usefulness of the proposed addition of the teachings of the *Hortensius* reference within the context of the *Gitlin* reference and, therefore, the legally required reason to make the combination is absent.

The *Gitlin* reference discusses a technique of assigning CDMA codes to high bit-rate users and lower bit-rate users and to then schedule them so that the bit error rate (BER) "caused by the

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total level of interference from all the transmissions remains below the acceptable threshold.” (Column 8, lines 44-45) The *Gitlin* reference assigns the codes to the users and schedules the users based on their codes so that *interference between codes* will be kept at a low enough level to satisfy the acceptable threshold. The use of different codes and strategically scheduling users of such codes in *Gitlin* does not correspond to varying “scheduling (time span) according to the bit error rate (BER) (channel quality)” as suggested by the Examiner. The *Gitlin* reference does not use channel quality for the scheduling technique relied upon by the Examiner. Instead, the relied upon portion of the *Gitlin* reference is only concerned with using the different codes assigned to the users and scheduling the users so that there is not *interference between the codes* to keep the bit error rate (BER) at the acceptable threshold. Managing interference between codes is not the same as “varying a scheduling time span according to channel quality” as suggested by the Examiner. Therefore, the Examiner’s interpretation of the *Gitlin* reference is not consistent with the actual teachings of the reference and Applicant respectfully submits that it is an unreasonable interpretation.

Given that the *Gitlin* reference does not use channel quality for varying scheduling, even if the proposed combination of the *Gitlin* and *Hortensius* references could be made, there is no *prima facie* case of obviousness.

Further, the proposed combination of the *Gitlin* and *Hortensius* references cannot be made. The Examiner acknowledges that the *Gitlin* reference fails to use a rate of change of channel quality for “his adjustments in wireless communication.” The Examiner then proposes to extract a “rate of change in channel quality” from the *Hortensius* reference “in place of using the ‘change quality’ in preventing interference from exceeding the acceptable threshold in the wireless transmission method of *Gitlin*.” (Final Office Action, page 3)

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The *Hortensius* reference describes a repetition rate selection having to do with repeated transmissions and data rates for transmissions. For example, column 3, lines 28-32 indicate that the repetition rate RR\* is for encoding data at a sending station. The repetition rate of the *Hortensius* reference is what is calculated taking into account "link quality." The Examiner relies upon the mention of using link quality in the abstract of the *Hortensius* reference, for example. The only use of the link quality information in that reference is for calculating the repetition rate.

The repetition rate of the *Hortensius* reference is not the same thing as the scheduling used in the *Gitlin* reference, which is focused on scheduling users based upon whether they are a high bit-rate or low bit-rate user and so that their assigned codes do not interfere. Moreover, the calculation of the repetition rate of the *Hortensius* reference has nothing to do with the scheduling technique of the *Gitlin* reference. It follows that there would be no benefit or usefulness for the *Hortensius* repetition rate calculation technique in the context of the code-based scheduling technique of the *Gitlin* reference.

Therefore, the proposed combination cannot be made because it does not provide any benefit or even a useful result. The *Hortensius* reference repetition rate does not in any way enhance the *Gitlin* code-based scheduling technique. Additionally, there would be no reason for a person of skill in the art to consider the repetition rate calculation technique of *Hortensius* in the context of the code-based scheduling technique of the *Gitlin* reference.

When, as here, a proposed combination provides no benefit or usefulness, the legally required reason for making the proposed combination is absent and there is no *prima facie* case of obviousness.

The Examiner's proposed combination appears to be based on hindsight reasoning relying upon Applicant's claims to piece together unrelated portions of the references as stated in the Office

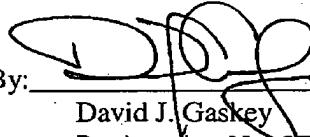
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Action. Hindsight reasoning is not a proper basis for attempting to manufacture a *prima facie* case of obviousness.

None of Applicant's claims can be considered obvious and the rejection must be withdrawn now so that Applicant is not forced to have the Board reverse the rejection when there is no *prima facie* case of obviousness. This case is in condition for allowance.

Respectfully submitted,

CARLSON, GASKEY & OLDS

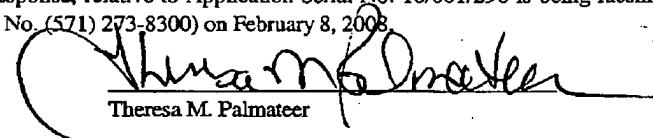
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Dated: February 8, 2008

CERTIFICATE OF FACSIMILE

I hereby certify that this Response, relative to Application Serial No. 10/001/296 is being facsimile transmitted to the Patent and Trademark Office (Fax No. (571) 273-8300) on February 8, 2008.

  
Theresa M. Palmateer